

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VANESSA ANN COKER

Registered Nurse License No. 613833,

Respondent.

Case No. 2007-219

OAH No. L2007040301

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on November 22, 2007.

IT IS SO ORDERED October 22, 2007



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 23, 2007, in San Diego, California.

Loretta A. West, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant Ruth Ann Terry, M.P.H., R.N., the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of California.

Respondent Vanessa Ann Coker, R.N. represented herself and was present throughout the administrative hearing.

The matter was submitted on July 23, 2007.

FACTUAL FINDINGS

License History

1. On February 14, 2003, the Board of Registered Nursing (the Board) issued Registered Nurse License No. 613833 to respondent Vanessa Ann Coker, R.N. (Coker or respondent). Coker's registered nursing license was in full force and effect at all times mentioned herein and has been renewed.

There is no history of any administrative discipline having been imposed against Coker's registered nursing license.

Jurisdictional Matters

2. On February 20, 2007, complainant Ruth Ann Terry, M.P.H., R.N., the Board's Executive Officer, signed the accusation in her official capacity. The accusation alleged Coker was convicted of violating Penal Code section 602.5 (unauthorized entry onto real property) on September 13, 2004, which constituted grounds for license discipline. The accusation and other required jurisdictional documents were served on Coker.

Coker timely filed a notice of defense.

On July 6, 2007, a first amended accusation was signed on complainant's behalf and was served on Coker. The new allegation – that Coker possessed and self-administered a controlled substance sometime between July 1, 2004 and January 2, 2006 – was deemed controverted by operation of law.

On July 23, 2007, the administrative record was opened. Complainant gave an opening statement. Respondent waived the opportunity to give an opening statement. Jurisdictional documents were presented. Sworn testimony and documentary evidence was received. Following receipt of the evidence, closing arguments were given, the record was closed, and the matter was submitted.

Respondent's Conviction

3. On September 13, 2004, Coker was convicted on her plea of guilty of violating Penal Code section 602.5 (unauthorized entry onto real property), a misdemeanor, in the Superior Court of California, County of San Diego, in Case No. CN 182941 entitled *People of the State of California v. Vanessa Ann Coker*.

The court suspended the imposition of the sentence and placed Coker on three years summary probation. Terms and conditions of probation required that Coker not commit the same or similar offense, that she pay fines and fees of \$120, that she not possess or own any weapons or firearms for ten years, that she stay at least 100 yards away from CC, and that she complete a 52-week anger management class.

Coker was on probation at the time of the administrative hearing. Coker has not violated probation. Probation expires in September 2007, and Coker will become eligible at that time to have the conviction expunged under Penal Code section 1203.4.

Circumstances of the Offense

4. In August 2004, Coker was six months pregnant. At the time, Coker was separated from her husband, CC, who was living with his girlfriend, GR, in GR's home in Vista. Coker also was suffering from a bipolar disorder. On the evening of August 14, 2004, Coker became very anxious. Coker called CC seeking support and then went to GR's home to speak with CC. In order to enter GR's residence, Coker climbed over a fence. Once Coker entered GR's residence, she took a six to eight inch steak knife from the kitchen,

which she threatened to use to harm herself in CC's presence. When CC left GR's bedroom to speak with Coker, a physical confrontation ensued. CC sustained several red marks on his arms and chest as a result of the confrontation. When Coker refused to leave GR's residence, the police were called. Coker was arrested for burglary, spousal abuse, and assault with a deadly weapon. Coker caused no significant injury to anyone. No medical attention was required.

Respondent's Possession and Self-Administration of Roxanol

5. In November 2004, CC entered a residential rehabilitation program for substance abuse (crystal methamphetamine). Before entering the program, CC left many personal possessions at Coker's residence, including a 500-mg bottle of Roxanol¹ which was nearly full. CC said he obtained the Roxanol from his girl friend, GR, who was a licensed vocational nurse. Coker photocopied the label on the bottle, sent a letter concerning her acquisition of the bottle of Roxanol to the Board of Licensed Vocational Nursing and Psychiatric Technicians, and secured the bottle in a locked safe.

In February 2005, during a bout of depression, Coker took the bottle of Roxanol out of the safe and drank it in an effort to take her own life. A friend stopped by Coker's home and summoned paramedics. Coker was taken to Tri-City Medical Center, where she was admitted to the behavioral health unit and where she remained for five days.

6. In January 2006, Kirk D. Hempel, an investigator with the Department of Consumer Affairs, spoke with Coker about the complaint she had filed against GR. He asked to see the bottle of Roxanol. Coker said she could not produce the bottle because she had used it herself when she was going through a rough time in her life. Coker admitted to Hempel that her use of Roxanol constituted unprofessional conduct. Hempel thereafter reported Coker's possession and self-administration of Roxanol to the Board.

Respondent's Testimony and Other Evidence

7. Coker was born on March 21, 1974, in San Francisco, California. She moved with her family to Oceanside, California. Coker graduated from El Camino High School in 1992. After graduating from high school, Coker took prerequisite nursing classes at Palomar Community College. In 1993, she entered a licensed vocational nursing program at Maric College. She completed that program in 1994 and became licensed as a vocational nurse.

Between 1994 and 2002, Coker worked as a licensed vocational nurse at several skilled nursing facilities in North San Diego County, primarily as a charge nurse. While engaged in that work, she continued her education at Palomar Community College.

¹ Official notice is taken that Roxanol is a liquid preparation of morphine sulfate that comes in various strengths. Roxanol is a narcotic medication that is used to provide quick and effective pain relief, particularly to treat breakthrough pain in cancer patients who have received opioids on a regular basis to treat baseline pain.

In 2001, Coker entered a registered nursing program at Palomar Community College. She completed that program in December 2002, and was licensed by the Board as a registered nurse on February 14, 2006.

8. Coker has worked as a registered nurse at Tri-City Medical Center since her licensure. Initially Coker was assigned to a medical/surgical floor. In July 2003, she was assigned to an oncology ward. Ultimately Coker became certified in chemotherapy. She continued her work in the oncology ward until very recently, when she began working at the Tri-City Medical Center emergency room.

9. Coker married CC in August 2001. CC was on active duty with the United States Marine Corps (USMC) at the time. Several months after their marriage, CC became employed by a fast food chain as a general manager. Sometime in 2002, Coker began treating with Dr. Eric Drimmer, a psychiatrist, for a bi-polar disorder. Around this time, and unbeknownst to Coker, CC began using crystal meth.

Coker became pregnant in early 2004. She stopped working temporarily as a registered nurse. She separated from CC five or six months later due to CC's drug use and after finding out that CC was having an affair with GR, who had been a colleague and friend of Coker's. The trespass and threatened suicide described in Factual Finding 4 occurred thereafter.

In November 2004, CC began treatment in a residential substance abuse program. It was as a result of this treatment that Coker came into possession of the bottle of Roxanol.

Coker currently has full custody of her infant son, who was born prematurely in fall 2004. He spends the days Coker works with Coker's mother, who lives in Oceanside. CC has rights of visitation four hours a week with his son, but he does not exercise those rights.

In early 2006, Coker met Jeffrey Hall (Hall), a 33-year-old aircraft fire fighter who is on active duty with the USMC and is stationed at Camp Pendleton. Coker established a close and caring relationship with Hall, who also provides care for Coker's infant son. Hall does not drink alcoholic beverages and does not use drugs. According to Hall, Coker does not consume alcohol, and does not take non-prescribed controlled substances or use any kind of dangerous drug; she is a meticulous, hard worker, a good friend, and a loving mother.

10. The Tri-City Medical Center employee summary dated July 22, 2004, stated that Coker "had a very difficult year this year which was compounded by issues outside of the workplace." The evaluation stated Coker was intelligent, possessed solid clinical skills, and had worked very effectively in the night shift relief charge nursing position.

The Tri-City Medical Center employee summary dated August 18, 2005, stated that Coker was a polite, caring, and compassionate team player who had made several positive changes in the preceding year. It mentioned her assistance to patients and others.

The most recent Tri-City Medical Center employee summary, dated August 2, 2006, stated Coker had “made several positive changes to her work habits and patient care in the last year.” The evaluation stated Coker was a team player who had many strengths.

11. A recent letter from Sylvia MacManus, R.N. (MacManus), the clinical nurse manager of the medical-surgical department at Tri-City Medical Center, stated that MacManus was Coker’s preceptor five years ago and that it had been a pleasure to work with Coker. She stated Coker was hard working, honest, dependable, and conscientious. One of Coker’s strengths was her willingness to seek new opportunities and expand her experience. She stated Coker worked as a preceptor to graduate students, new hires, and student nurses. Coker represented her unit on the clinical information committee. MacManus noted that Coker was a certified chemotherapy nurse.

12. Since June 2002, Coker has been and remains under the care of Eric Drimmer, M.D., a psychiatrist, for her bi-polar disorder. Dr. Drimmer oversees Coker’s medications. Coker currently sees Dr. Drimmer every three months. Coker did not provide a report or other evidence from Dr. Drimmer.

Coker currently meets with a psychotherapist about once every three months to discuss her situation and to manage her depression. Coker did not provide a report or other evidence from her psychotherapist.

13. Coker does not appear to have any kind of substance abuse problem. Her work history and criminal history are wholly inconsistent with the existence of such a problem. Coker does not participate in any kind of substance abuse or recovery program, and it does not appear that she needs that kind of intervention.

14. Coker does not want a probationary license because she believes a long time has passed since the incidents giving rise to the charges, she has been in treatment with Dr. Drimmer and a psychotherapist, she feels she does not have a substance abuse problem, she has nearly completed her criminal probation, she has never caused any patient harm, her skills as a registered nurse are improving, and a probationary license would be embarrassing.

Coker said her immediate supervisors in the emergency room are not aware of her bi-polar disorder, her depression, her conviction, or her self-administration of Roxanol. Coker conceded that disclosure of that information would be helpful in monitoring her situation at work. Coker had no objection to submitting to random drug testing.

Disciplinary Guidelines/Appropriate Disciplinary Order

15. In keeping with its obligation to protect consumers of nursing services from unsafe, incompetent, or negligent registered nurses, the Board adopted disciplinary guidelines for violations of the Nursing Practice Act. In imposing license discipline, the Board carefully considers the totality of the facts and circumstances of each case, with the safety of the public being paramount. The Board requests an administrative law judge (ALJ) to clearly delineate the factual basis for his proposed decision, especially if the ALJ deviates

from the Board's recommended guidelines. The ALJ's rationale for a deviation should be reflected in the proposed decision to enable the Board to understand and evaluate the appropriateness of the proposed disciplinary order.

If an ALJ finds at the time of hearing that a licensee is incapable of safe practice for any reason, the Board favors outright revocation of the license. If, however, the licensee has demonstrated a capacity to practice safe nursing, then a stayed revocation with an order of probation is recommended.

16. For the conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse, the disciplinary guidelines recommend an outright revocation. The offenses that the Board deems to be substantially related to the qualifications, functions or duties of a registered nurse include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and the sale or use of controlled substances.

This matter involves a misdemeanor trespass conviction. While the conviction incidentally involved a minor battery, the battery was an unintended result of the fracas that occurred when CC tried to remove Coker from GR's residence and it resulted in no injuries.

It is concluded that Coker's conviction demonstrated poor judgment, some anger management problems, and a problem (at the time) with a bi-polar disorder. Under these circumstances, the conviction is sufficiently related to the qualifications, functions, and duties of a registered nurse to warrant imposition of a minimal level of discipline, but not an outright revocation. The conviction certainly did not establish that Coker is incapable of safe practice.

The disciplinary recommendation, and the order based thereon, is discussed in greater detail in Factual Finding 17.

17. For illegally obtaining, possessing, or self-administering narcotics, the disciplinary guidelines recommend a maximum penalty of an outright revocation and a minimum penalty of revocation, stayed, with three years probation coupled with minimum conditions of probation including terms 1-19² in "cases of first time offense, with documented evidence of an on-going rehabilitation program."

In this matter, Coker did not come into possession of the Roxanol illegally or through her employment. Coker notified a licensing agency of her possession of the Roxanol and

² Probationary terms 1-19 are: (1) Obey all Laws; (2) Comply With Board's Probation Program; (3) Report in Person; (4) Residency or Practice Outside of State; (5) Submit Written Reports; (6) Function as a Registered Nurse; (7) Employment Approval and Reporting Requirements; (8) Supervision; (9) Employment Limitations; (10) Complete a Nursing Course(s); (11) Cost Recovery (Does not apply to Applicants); (12) Violation of Probation; (13) License Surrender; (14) Physical Examination; (15) Participate in Treatment/Rehabilitation Program for Chemical Dependence; (16) Abstain From Use of Psychotropic (Mood-Altering) Drugs; (17) Submit to Tests and Samples; (18) Mental Health Examination; and (19) Therapy or Counseling Program.

kept it secured until she attempted to use it to take her life. While Coker's one-time self-administration of Roxanol does not support a finding that she had a substance abuse problem, that she was using narcotics in an addictive manner, or that she is in imminent danger of becoming addicted and needs rehabilitation, her use of the Roxanol raises concerns about her mental health and warrants the imposition of probationary conditions directed towards the exploration of a possible substance abuse problem and her current mental and emotional competency.

18. Based on the various disciplinary factors that the Board has prescribed and have been considered (which are outlined in Factual Findings 1 and 3-14), and based upon the finding that Coker is capable of safely practicing as a registered nurse at this time, it is concluded that an outright revocation of Coker's license is not required to protect the public, and that a revocation, stayed, with a period of probation is warranted. The probationary terms that best apply in this matter include the imposition of standard terms 1-13, as well as terms requiring Coker to undergo physical and mental health examinations, participation in a therapy or counseling program, abstaining from use of psychotropic drugs except as might be prescribed by her treating physician, submitting to random drug testing, and, if indicated by the physical or mental health examination, participation in a substance-abuse treatment or rehabilitation program. Payment of costs of investigation and enforcement has not been included because proof of such costs was not established.

19. This recommendation is a departure from the disciplinary guidelines. The reasons for the departure are set forth in Factual Findings 15-18.

Reasonable Costs of Enforcement

20. Costs of investigation and enforcement were requested in both the accusation and in the first amended accusation. However, no proof was offered at the administrative hearing concerning the Board's reasonable costs. There was no certification of costs and there was no declaration from the deputy attorney general who prosecuted the action.

In the absence of any proof of the Board's costs, an award of costs cannot be made.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a nursing license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

2. The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

The Board's Authority to Impose License Discipline

3. Business and Professions Code section 490 provides in part:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued . . .”

4. Business and Professions Code section 2761 provides in part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

...

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it.

...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof . . .”

5. Business and Professions Code section 2762 provides in part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) . . . administer to himself or herself . . . any controlled substance . . . or any dangerous drug . . .”

Regulatory Authority

6. California Code of Regulations, title 16, section 1444 provides in part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct . . .
- (b) Failure to comply with any mandatory reporting requirements.'
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

Substantial Relationship

7. Conviction alone will not support the imposition of discipline against a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.)

8. Coker's conviction, involving minimally assaultive and abusive conduct, is substantially related to the qualifications, functions and duties of a registered nurse and provides cause to impose license discipline. This conclusion is based on Factual Findings 3 and 4 and on Legal Conclusions 1-4, 6, and 7.

9. Coker's use of Roxanol reflected a lack of sound professional and personal judgment that is relevant to her fitness and competence to practice nursing. It was not necessary for the misconduct to have occurred in the actual practice of nursing. Postponing the imposition of license discipline until the nurse-licensee harms a patient or disregards many of the purposes of the Nursing Practice Act; it is far more desirable to impose discipline *before* a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757.)

Cause Exists to Impose License Discipline

10. Cause exist to impose license discipline under Business and Professions Code sections 490, 2761, subdivisions (a), (d), and (f), and 2762, subdivision (a). In September 2004, Coker was convicted of trespass, a conviction which involving some assaultive and abusive conduct. In February 2005, during a bout of depression, Coker ingested a bottle of Roxanol in a failed effort to take her own life. These two instances were substantially related to the qualifications, functions and duties of a registered nurse. It was not established that Coker is incapable of practicing safe nursing. The order set forth herein is designed to assure that Coker's bi-polar condition does not pose a risk of harm to the consuming public, that it is being effectively treated, that Coker does not have a substance abuse problem, and that Coker's supervisors will appreciate her situation so they can better monitor her in the workplace. While the proposed order is a deviation from the Board's guidelines, it is warranted under the circumstances.

This conclusion is based on Factual Findings 1 and 3-19 and on Legal Conclusions 1-10.

Recovery of Costs

11. Business and Professions Code section 125.3 provides in part:

“(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

. . .

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . .”

12. Cause does not exist under Business and Professions Code section 125.3 to issue an order directing Coker to pay costs of investigation and prosecution. It was not established that the Board incurred such costs.

This conclusion is based on Factual Finding 20 and on Legal Conclusion 10.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 613833 issued to respondent Vanessa Ann Coker, R.N. is revoked. However, the order of revocation is stayed, and respondent is placed on probation for five (5) years on the following terms and conditions. Each condition of probation contained herein is separate and distinct. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of an arrest for any crime. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within forty-five (45) days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: Respondent is currently under criminal court orders, including an order of probation, and if this probationary order is violated, this too shall be deemed a violation of these probation conditions, and it may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than fifteen (15) days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled if and when she resides outside of California. Respondent must provide written notice to the Board within fifteen (15) days of any change of residency or practice outside the state, and within thirty (30) days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of twenty (24) hours per week for six (6) consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

If respondent has not complied with this condition during the probationary term, and if respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, then the Board, in its discretion,

may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and to her immediate supervisors within twenty-four (24) hours that this decision becomes effective and prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing

supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of forty (40) hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE - Respondent, at her own expense, shall enroll and successfully complete a three (3) unit course relevant to the practice of registered nursing no later than six (6) months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course. Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records.

(11) VIOLATION OF PROBATION - If a respondent violates the conditions of her probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or if the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(12) LICENSE SURRENDER - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

The surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision: Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or one year for a license surrendered for a mental or physical illness.

(13) PHYSICAL EXAMINATION - Within forty-five (45) days of the effective date of this decision, respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse, including a determination as set forth below in Condition 15, "Rule-Out-Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall forthwith request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(14) MENTAL HEALTH EXAMINATION - Respondent shall, within forty-five (45) days of the effective date of this decision, have a mental health examination including

psychological testing as appropriate to determine her capability to perform the duties of a registered nurse, including a determination as set forth below in Condition 15, "Rule-Out Substance Abuse Assessment." The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) RULE-OUT SUBSTANCE ABUSE ASSESSMENT - If the examiner conducting the physical and/or mental health examination determines that respondent is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then respondent must further comply with the following additional terms and conditions of probation.

(A) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five (5) 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(B) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment and she shall abstain from the consumption of alcoholic beverages. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(C) SUBMIT TO TESTS AND SAMPLES - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.


If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(D) THERAPY OR COUNSELING PROGRAM - Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

(16) COMPLETION OF PROBATION - Upon successful completion of probation, respondent's license shall be fully restored.

DATED: August 6, 2007.



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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9

10
11 **BEFORE THE**
12 **BOARD OF REGISTERED NURSING**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

15 In the Matter of the First Amended Accusation
Against:

16 VANESSA ANN COKER, R.N.
17 4154 Summerview Way
Oceanside, CA 92056

18 Registered Nurse License No. 613833

19 Respondent.
20

Case No. 2007-167

OAH No. 1-2007010629

**FIRST AMENDED
ACCUSATION**

21 Complainant alleges:

22 **PARTIES**

23 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this First Amended
24 Accusation solely in her official capacity as the Executive Officer of the Board of Registered
25 Nursing, Department of Consumer Affairs.

26 2. This First Amended Accusation includes all allegations contained in the
27 original Accusation as well as additional allegations. This First Amended Accusation supercedes
28 the original Accusation filed in this matter on February 20, 2007.

3. On or about February 14, 2003, the Board of Registered Nursing issued Registered Nurse License Number 613833 to Vanessa Ann Coker, R.N. (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2008, unless renewed.

JURISDICTION

4. This First Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

• • • •

(b) Considering suspension or revocation of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take

1 disciplinary action against a person who hold a license, upon the
2 ground that the applicant or the licensee has been convicted of a crime
3 substantially related to the qualifications, functions, and duties of the
4 licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of
that fact, and the board may inquire into the circumstances surrounding
the commission of the crime in order to fix the degree of discipline or to

5 determine if the conviction is substantially related to the qualifications,
6 functions, and duties of the licensee in question.

7 As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

8 9. Section 2750 of the Code provides, in pertinent part, that the Board may
9 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
10 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

11 10. Section 2761 of the Code states:

12 The board may take disciplinary action against a certified or
13 licensed nurse or deny an application for a certificate or license for
any of the following:

14 (a) Unprofessional conduct, which includes, but is not limited to,
15 the following:

16

17 (d) Violating or attempting to violate, directly or indirectly,
or assisting in or abetting the violating of, or conspiring to violate
18 any provision or term of this chapter [the Nursing Practice Act] or
regulations adopted pursuant to it.

19

20 (f) Conviction of a felony or of any offense substantially related
21 to the qualifications, functions, and duties of a registered nurse, in which
event the record of the conviction shall be conclusive evidence thereof.

22 11. Section 2762 of the Code states:

23 In addition to other acts constituting unprofessional conduct within the
24 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
25 for a person licensed under this chapter to do any of the following:

26

27 (a) Obtain or possess in violation of law, or prescribe, or except as
directed by a licensed physician and surgeon, dentist, or podiatrist administer to
28 himself or herself, or furnish or administer to another, any controlled substance as
defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug or dangerous device as defined in Section 4022.

1 (b) Use any controlled substance as defined in Division 10 (commencing
2 with Section 11000) of the Health and Safety Code, or any dangerous drug or
3 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
4 or in a manner dangerous or injurious to himself or herself, any other person, or
5 the public or to the extent that such use impairs his or her ability to conduct with
6 safety to the public the practice authorized by his or her license.

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12. Section 2725 of the Code states:

(a) In amending this section at the 1973-74 session, the Legislature recognizes that nursing is a dynamic field, the practice of which is continually evolving to include more sophisticated patient care activities. It is the intent of the Legislature in amending this section at the 1973-74 session to provide clear legal authority for functions and procedures that have common acceptance and usage. It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses and to permit additional sharing of functions within organized health care systems that provide for collaboration between physicians and registered nurses. These organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

(b) The practice of nursing within the meaning of this chapter [the Nursing Practice Act] means those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including all of the following:

(1) Direct and indirect patient care services that ensure the safety, comfort, personal hygiene, and protection of patients; and the performance of disease prevention and restorative measures.

(2) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code.

(3) The performance of skin tests, immunization techniques, and the withdrawal of human blood from veins and arteries.

(4) Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.

1 13. California Code of Regulations, title 16, section 1444 states:

2 A conviction or act shall be considered to be substantially related
3 to the qualifications, functions or duties of a registered nurse if to a
4 substantial degree it evidences the present or potential unfitness of a
5 registered nurse to practice in a manner consistent with the public health,
6 safety, or welfare. Such convictions or acts shall include but not be
7 limited to the following:

8 (a) Assaultive or abusive conduct including, but not limited to,
9 those violations listed in subdivision (d) of Penal Code Section 11160.

10 14. California Code of Regulations, title 16, section 1445 states:

11 (b) When considering the suspension or revocation of a license
12 on the grounds that a registered nurse has been convicted of a crime,
13 the board, in evaluating the rehabilitation of such person and his/her
14 eligibility for a license will consider the following criteria:

15 (1) Nature and severity of the act(s) or offense(s).

16 (2) Total criminal record.

17 (3) The time that has elapsed since commission of the act(s) or
18 offense(s).

19 (4) Whether the licensee has complied with any terms of parole,
20 probation, restitution or any other sanctions lawfully imposed against the
21 licensee.

22 (5) If applicable, evidence of expungement proceedings pursuant
23 to Section 1203.4 of the Penal Code.

24 (6) Evidence, if any, of rehabilitation submitted by the licensee.

25 DRUGS

26 15. Morphine Sulfate is a Schedule II Controlled Substance under Health and
27 Safety Code Section 11055(b)(1)(M) and is a narcotic analgesic. Roxanol is one trade-marked
28 name for Morphine Sulfate.

29 FIRST CAUSE FOR DISCIPLINE (Criminal Conviction on September 13, 2004 for Unauthorized Entry of Property - Incident on August 14, 2004)

30 16. Respondent is subject to disciplinary action under sections 490 and
31 2761 (f) based on her conviction of a crime substantially related to the qualifications, functions,
32 and duties of a registered nurse. The circumstances are as follows:

1 17. On August 14, 2004 Respondent was separated from her husband CC who
2 was staying with a girlfriend, GR. Intent on contacting CC, Respondent climbed over a fence
3 onto the property of GR and retrieved a knife from the kitchen before entering a bedroom to
4 confront CC. Respondent and CC struggled over the knife which CC took from her, kicking it
5 further away into the bedroom; the struggle continued with CC dragging Respondent into the
6 living room to keep her away from GR. Respondent refused to leave and made an attempt to
7 reenter the bedroom to contact GR, who was holding the door closed. CC restrained Respondent
8 a second time, and until the police arrived. At the time of this incident Respondent was 6-7
9 months pregnant.

10 18. On September 13, 2004 in the matter of *People v. Vanessa Ann Coker* in
11 the San Diego Superior Court, Case No.182941, Respondent was convicted on her plea of guilty
12 of a misdemeanor violation of Penal Code section 602.5 (Unauthorized Entry of Property). The
13 original charges filed in the criminal complaint of Penal Code sections 273.5(a) (Corporal Injury
14 to Spouse), 243.5(e)(1) (Battery of a Current or Former Significant Other), and 594(a)(b)(2)(A)
15 (Vandalism) were dismissed per the plea agreement.

16 19. On September 13, 2004 Respondent was placed on 3 years informal
17 probation and sentenced to serve 5 days in the San Diego Jail, pay fines and restitution of \$120,
18 attend 52 weeks of a domestic violence rehabilitation treatment program, abide by a stay away
19 (from victim) order, not to own or have possession, custody or control of any weapons or
20 firearms, and comply with other standard terms of probation.

21
22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Unlawful Possession and Self-Administration of**
24 **a Controlled Substance - Morphine Sulfate)**

25 20. Respondent is subject to disciplinary action under sections 2761(d) and
26 2762 in that, by her own admission, Respondent unlawfully possessed without a prescription and
27 self-administered the controlled substance Morphine Sulfate, on unknown date(s) sometime
28 between July 1, 2004, and January 2, 2006.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 613833, issued
5 to Vanessa Ann Coker, R.N.;

6 2. Ordering Vanessa Ann Coker, R.N. to pay the Board of Registered
7 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
8 Business and Professions Code section 125.3; and

9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 7/6/07

12
13 *Ruth Ann Terry for*
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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